

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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VERIFY SMART CORP.,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No.

COMPLAINT FOR PATENT
INFRINGEMENT

DEMAND FOR JURY TRIAL

Plaintiff Verify Smart Corp. (“Verify”) demands a jury trial and complains against Defendant Apple Inc. (“Apple”).

THE PARTIES

1. Verify is a corporation organized and existing under the laws of the State of Nevada, conducting business in this judicial district.
2. Upon information and belief, Apple is headquartered in Cupertino, California and conducts business in this judicial district.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States of America, Title 35 of the United States Code. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a).

4. Verify is informed and believes, and based thereon alleges, that Apple is doing business and committing acts of infringement of the patent identified below in this judicial district, and is subject to personal jurisdiction in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PATENTS

6. On October 9, 2012, U.S. Patent No. 8,285,648 (“the ‘648 patent”) was duly and legally issued to Dan Scammell (“Scammell”) for an invention entitled “System and Method for Verifying A User’s Identity In Electronic Transactions”. On May 23, 2011, Scammell assigned all right, title and interest in and to the ‘648 patent to Colleen Scammell (“C. Scammell”). On July 8, 2015, C. Scammell assigned all right, title and interest in and to the ‘648 patent to Assured Mobile Technologies LLC (“Assured”). Thereafter, on July 8, 2015, Assured assigned all right, title and interest in and to the ‘648 patent to Verify. A copy of the ‘648 patent is attached to this Complaint as Exhibit 1.

7. The ‘648 patent is directed to novel systems and methods of verifying the identity of consumers initiating electronic transactions to provide enhanced security for such transactions.

DIRECT INFRINGEMENT BY APPLE

8. Verify is informed and believes, and based thereon alleges, that Apple makes, uses, tests, markets and sells or otherwise provides a system and method for enabling a user to authenticate their identity when initiating an electronic transaction, using a one-time pass-code sent to the user’s mobile phone (hereinafter “Apple two-step verification”).

9. Verify is informed and believes, and based thereon alleges, that Apple two-step verification is designed to enable secure transactions for Apple's customers.

10. Verify is informed and believes, and based thereon alleges, that Apple two-step verification infringes claims of the '648 patent, including without limitation at least claims 2 and 5, literally and/or under the doctrine of equivalents, in violation of Verify's rights.

APPLE'S INDIRECT INFRINGEMENT

11. Verify is informed and believes, and based thereon alleges, that Apple two-step verification is designed specifically to enable users to authenticate their identity in a manner that infringes the claims of the '648 patent, including without limitation at least claims 2 and 5 thereof.

12. Verify is informed and believes, and based thereon alleges, that Apple two-step verification is material for enabling a user to authenticate their identity in a manner that infringes the claims of the '648 patent.

13. Verify is informed and believes, and based thereon alleges, that Apple two-step verification is using a method for authenticating an identity in a manner that infringes the method claims of the '648 patent.

14. Verify is informed and believes, and based thereon alleges, that Apple two-step verification does not have substantial non-infringing uses.

15. On its website at <https://support.apple.com/en-us/HT204152>, Apple advertises that "When you set up two-step verification, you register one or more trusted devices. A trusted device is a device you control that can receive 4-digit verification codes using either SMS or Find My iPhone. You're required to provide at least one SMS capable phone number. Then, any time you sign in to manage your Apple ID at [My Apple ID](#), sign in to iCloud, or make an iTunes,

iBooks, or App Store purchase from a new device, you'll need to verify your identity by entering both your password and a 4-digit verification code, as shown below.”

16. On its website at <https://support.apple.com/en-us/HT204152>, Apple provides the following graphic to show how its two-step verification system operates:



17. Apple also advertises on its website at <https://support.apple.com/en-us/HT204152> that “After you sign in, you can securely access your account or make purchases as usual. Without both your password and the verification code, access to your account will be denied.”

18. Apple provides express instructions in its advertisement materials that teach and suggest to its customers to use Apple two-step verification in a way that infringes at least claims 2 and 5 of the ‘648 patent.

19. Verify is informed and believes, and based thereon alleges, that Apple has investigated the ‘648 patent and became aware, or should have become aware, that Apple two-step verification infringes the ‘648 patent.

20. Verify is informed and believes, and based thereon alleges, that Apple has been advertising and offering for use by its customers the infringing Apple two-step verification after Apple became aware that it infringed the ‘648 patent, and will continue with such infringing activities.

21. Verify is informed and believes, and based thereon alleges, that Apple has been selling or otherwise providing Apple two-step verification to its customers with the specific

knowledge of the ‘648 patent and the specific knowledge that Apple two-step verification is and will be used to infringe the ‘648 patent, and that Apple will continue such infringing activities.

22. Apple is jointly responsible with each of its customers for the infringement of the ‘648 patent, through the use of Apple two-step verification.

23. Apple contributes to the infringement and induces infringement of the ‘648 patent based on its marketing, sale, distribution and teaching to its customers how to use Apple two-step verification, and Apple’s own actions in assisting its customers in the operation of Apple two-step verification.

24. Apple has been and is actively inducing the infringement of the ‘648 patent by encouraging its customers to use Apple two-step verification, that has no substantial non-infringing use and is material for enabling secure electronic transactions in a manner that constitutes direct infringement of the claims of the ‘648 patent. Apple has been and continues doing so with knowledge of the ‘648 patent and with the specific intent that its customers use Apple two-step verification in a manner that constitutes direct infringement of the claims of the ‘648 patent.

25. Apple has been and is contributorily infringing the ‘648 patent by providing to its customers Apple two-step verification, which has no substantial non-infringing use and is material for enabling secure electronic transactions in a manner that constitutes direct infringement of the claims of the ‘648 patent. Apple has been and continues doing so with knowledge of the ‘648 patent and with the specific intent that its customers use Apple two-step verification in a manner that constitutes direct infringement of the claims of the ‘648 patent.

26. Apple’s customers have been using Apple’s Apple two-step verification in a manner that constitutes infringement of the claims of the ‘648 patent.

27. Apple assists its customers with their infringing uses of Apple two-step verification, including without limitation teaching its customer how to operate Apple two-step verification, supporting its operation and providing testing, support and maintenance for Apple two-step verification, either directly or through Apple's authorized agents, affiliates and/or business partners.

28. Verify has been and is being damaged by the foregoing activities of Apple and its customers which infringe the '648 patent, and will be irreparably harmed unless such infringing activities are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Verify prays for judgment against Defendant Apple on all the counts and for the following relief:

- A. Declaration that the Verify is the owner of the right to sue and to recover for infringement of the '648 patent being asserted in this action;
- B. Declaration that Apple has directly infringed, actively induced the infringement of, and/or contributorily infringed the '648 patent;
- C. Declaration that Apple and its customers are jointly or severally responsible for the damages from infringement of the '648 patent through the use of Apple two-step verification;
- D. Declaration that Apple is responsible jointly or severally with its customers for the damages caused by the infringement of the '648 patent through the use of Apple two-step verification, by the Apple's customers;
- E. A preliminary and permanent injunction against Apple, each of its officers, agents, servants, employees, and attorneys, all parent and subsidiary corporations, their

assigns and successors in interest, and those persons acting in active concert or participation with them, including distributors, enjoining them from continuing acts of direct infringement, active inducement of infringement, and contributory infringement of the ‘648 patent;

- F. An accounting for damages under 35 U.S.C. § 284 for infringement of the ‘648 patent by Apple, and the award of damages so ascertained to Verify together with interest as provided by law;
- H. Award of Verify’s costs and expenses;
- I. Award of Verify’s attorney fees; and
- J. Such other and further relief as this Court may deem proper, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff Verify demands a trial by jury of all issues properly triable by jury in this action.

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